

PATENT**Application # 09/851,284**

Attorney Docket # 1999-0647 (1014-131)

REMARKS

The Examiner is respectfully thanked for the thoughtful consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 1-20 has been amended for reasons unrelated to patentability, including at least one of: to correct an informality, to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-20 are now pending in this application. Each of claims 1, 6, 8, 10, and 14 are in independent form.

The Obviousness Rejections

Each of claims 1-20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Masuda (U.S. Patent No. 6,201,810), Rochberger (U.S. Patent No. 6,594,235), Ofek (U.S. Patent No. 6,038,230), and Bentall (U.S. Patent No. 6,163,525). Each rejection is respectfully traversed.

A. *Prima Facie* Criteria

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be

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met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." *See* MPEP 2143. Moreover, the USPTO "has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967).

B. Missing Subject Matter

Independent claims 1, 6, 8, 10, and 14 recite, yet Masuda fails to expressly or inherently teach or suggest, "said switching based upon congestion occurring **only within the router.**"

Instead, Masuda allegedly recites that "when it is judged that local buffer overflow occurs in the **adjacent** connectionless communication devices, any (second to n-th) output path which excludes any congestion-occurring path from the given plural candidates is specified to control a temporary bypass operation on a packet basis." *See* col. 8, lines 30-35. Thus, Masuda does not teach or suggest "switching based upon congestion occurring **only within the router.**"

Therefore, Masuda fails to expressly or inherently teach or suggest all of the subject matter of claims 1, 6, 8, 10, and 14. None of the remaining cited references overcome the deficiencies of Masuda.

Thus, even if there were motivation or suggestion to modify or combine the cited references (an assumption with which the applicant disagrees), and even if there were a reasonable expectation of success in combining or modify the cited references (another assumption with which the applicant disagrees), the cited references still do not expressly or

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inherently teach or suggest every limitation of independent claims 1, 6, 8, 10, and 14, and consequently fail to establish a *prima facie* case of obviousness.

Because no *prima facie* rejection of any of independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of each rejection of claims 1-20 is respectfully requested.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

“none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely,

claims 1-20 are allowable because none of the references of record alone or in combination disclose or suggest ‘said switching based upon congestion occurring only within the router.’”

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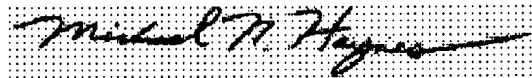
CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

A handwritten signature in black ink, appearing to read "Michael N. Haynes", is written over a rectangular area with a light gray dot grid background.

Date: 16 November 2005

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